IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4791 OF 2004

Nivruti Babu Patil & Ors... .... Petitioners.
Versus
The State of Maharashtra & Ors.. ... Respondents.

Mr. N. D. Hombalkar for the Petitioners.
Mr. V. P. Malvankar, AGP for Respondent Nos.1 and 2.
Mr. N.J.Patil for Respondent Nos.3 to 12.

CORAM : R. M. LODHA &
NARESH H. PATIL, JJ.

DATED : 7TH AUGUST, 2006.

P.C. :

Heard.

2. Rule.

3. Returnable forthwith. Mr. V. P. Malvankar, Assistant Government Pleader, waives service for respondent nos.1 and 2. Mr. N. J. Patil, advocate, waives service for respondent nos.3 to 12. Rule is heard finally at this stage.

4. The impugned order in English translation reads thus:

"Order received from the State of Maharashtra No. P.T.L.-38/2000/870/P.K.-304-L

-4 dated 2.7.2002 and order passed by the Hon'ble High Court in Writ Petition No. 3937 of 2003 decided on 24.3.2004.

In accordance with the order passed above, the possession of Revision S. No.16 (Gat No.36) admeasuring 1 Hector and 3 R assessed at Rs.14-44 situate at Village Bange, Taluka Kagal will be taken from the opponents and will be handed over to the Applicants on 4.6.2004. Remain present in the land at 11 A.M. on the date fixed. In case you remain absent, the work of handing over possession will be completed in your absence."

5. We perused the order dated 24th March, 2004 passed by this Court in Writ Petition No.7937 of 2003 (**Nivrutti Babu Patil & Ors. v/s The state of Maharashtra & Ors.)**. From the perusal of the said decision it transpires that this Court held that the action of the State Government in divesting ownership of the petitioner in respect of the subject land was wrong and that the ownership is restored to Nivrutti Babu Patil and for that requisite entry be made in Fer-Far Nond. However, with regard to possession, this Court observed that owner shall have to adopt appropriate legal process for recovery of possession on the basis of these entries. This is what

the Division Bench held in paragraphs 2 and 3.

> "2. Thereafter, on 2nd July, 2002 approval was granted by the Government to release these lands to said Shri Patil and as a consequence of these two documents, change was effected by Exhibit-E (Fer-far Nond). In none of the three documents there is any mention that possession of the property in question be delivered to any person. What has been done by these documents is transfer of ownership. Ownership of Shri Patil which was taken away by the state is given back to Shri Patil by these documents and, therefore, Fer-far entry is made.
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> 3. These entries by themselves cannot create a right in the owner to seek possession, who will have to take appropriate legal steps permitted by law to recover possession on the basis of these entries. As and when such occasion arises, petitioners shall have all their contentions open to defend their possession. This being the factual position, we see no reason to interfere. Petition is disposed with the above observations."

6. In the impugned order, however, the Tahsildar has assumed that this Court in its order dated 24th March,

2004 has directed that possession be given to respondent nos.3 to 12 in respect of the subject land which is not correct.

7. As a matter of fact, Counsel for respondent nos.3 to 12 was unable to justify the impugned order.

8. We, accordingly, quash and set aside the order dated 28th May, 2004 passed by Tahsildar, Kagal. The respondent nos.3 to 12 shall be at liberty to adopt appropriate legal process for recovery of possession of the subject land on the basis of the Fer-far entries that has been made pursuant to the order of this Court dated 24th March, 2004.

9. Rule made absolute, accordingly.

10. No costs.

Sd/-

(R. M. LODHA, J.)

Sd/-

(NARESH H. PATIL, J.)